

## Message Text

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TO AMEMBASSY BONN

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AMEMBASSY MOSCOW

AMEMBASSY PARIS

C O N F I D E N T I A L USBERLIN 0342

E.O. 11652: GDS

TAGS: PGOV, WB, GW

SUBJECT: ABORTION LAW--PROPOSED PROCEDURE FOR DEALING  
WITH CONSTITUTIONAL COURT DECISION

REF: A) BONN 2928 (NOTAL); B) USBERLIN 290

1. SUMMARY: CONSTITUTIONAL COURT DECISION FEBRUARY 25  
GIVES FEW WEEKS BREATHING SPACE, BUT WE ARE ADVISED THAT  
SENAT IS PRESSING FRG TO RAISE MATTER WITH EMBASSIES  
AND PERHAPS CAPITALS AS WELL WITH VIEW TO SEEKING NOT  
ONLY CLEAR RESOLUTION OF ABORTION REFORM LAW MATTER FOR  
BERLIN BUT ALSO AGREED PROCEDURE FOR DEALING WITH  
SIMILAR FUTURE PROBLEMS BY TIME HOUSE OF REPRESENTATIVES  
RECOVENES IN MID-MARCH. IT IS UNLIKELY, THEREFORE,  
THAT FRENCH POSITON THAT ALLIES NEED DO NOTHING WILL  
PUT EARLY END TO MATTER. END SUMMARY:

2. WIRE SERVICE REPORTS INDICATE KARLSRUHE  
COURT RULED THAT PROVISIONS OF REFORM LAW FOR ABORTION  
ON DEMAND WITHIN FIRST THREE MONTHS OF PREGNANCY ARE  
UNCONSTITUTIONAL AND THAT TEMPORARY INJUNCTION, WHICH  
IN EFFECT LEGISLATED THAT ABORTIONS ARE TO BE PERFORMED  
IN FIRST THREE MONTHS OF PREGNANCY ONLY WHEN CERTAIN  
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ETHICAL AND MEDICAL FACTORS ARE PRESENT, IS CONTINUED IN

FORCE UNTIL SUCH TIME AS BUDESTAG PRODUCES NEW LEGISLATION. SENAT HAS INDICATED TO US THAT THERE APPEARS NO NEED TO MAKE FORMAL STATEMENT ON BERLIN SITUATION AT PRESENT SINCE COURT DECISION ESSENTIALLY CARRIES ON STATUS QUO, AND BERLIN HOUSE OF REPRESENTATIVES IS NOT SCHEDULED TO RECONVENE UNTIL MID-MARCH. SENAT, HOWEVER, WISHES TO HAVE AGREED POSITION WITH ALLIES ON WHAT SHOULD BE DONE ON ABORTION LAW WHEN HOUSE RECONVENES AND HOPES THAT THIS CAN BE POSITION WHICH WILL BE GENERALLY APPLICABLE TO ANY SIMILAR PROBLEMS THAT DEVELOP IN FUTURE.

3. CONTRARY TO INDICATION REF A THAT FRENCH MINISTER WOULD ADVISE SENATOR FOR JUSTICE KORBER OF REASONS WHY ALLIES NOT PRESENTLY IN POSITION TO BE HELPFUL, FRENCH CHOSE TO ADVISE SENAT FEBRUARY 21 BY TWO SENTENCE ORAL STATEMENT FROM LIAISON OFFICER DURING COURSE OF ROUTINE MEETING OF ALLIED LIAISON OFFICERS WITH HEAD OF CHANCELLERY HERZ. FRENCH LIAISON OFFICER MERELY SAID THAT FRENCH HAD NEVER AGREED TO ANY OF POSITIONS DISCUSSED BY LEGAL ADVISORS AND KORBER AND CONFIRMED IN RESPONSE TO DIRECT QUESTION BY HERZ THAT MATTER REMAINED "OPEN." SUBSEQUENTLY, FRENCH MINISTER EXPLAINED TO HIS ALLIED COUNTERPARTS THAT HE WAS PREPARED TO MEET WITH KORBER ONLY IF SENATOR REQUESTED SUCH A MEETING. SINCE THERE WAS NO PLANNED MEETING OF LEGAL ADVISORS AND KORBER (INFORMATION RE A WAS INCORRECT), WE UNDERTOOK INFORMAL UNILATERAL CONTACTS WITH DR. HEIDELMEYER, HEAD OF SENAT LEGAL DEPARTMENT, TO ENSURE THAT SENAT REACTION TO COURT DECISION WOULD NOT BE UNFORTUANTE PUBLIC STATEMENT.

4. HEIDELMEYER ADVISED US THAT PRELIMINARY THINKING IS THAT THERE SHOULD BE NO NEED FOR SENAT TO SAY MUCH PUBLICLY PRIOR TO RECONVENING OF HOUSE SINCE ALL EYES WILL BE ON BONN TO SEE WHAT FEDERAL GOVERNMENT INTENDS TO DO ABOUT PREPARING NEW LAW. HE AND HERZ BOTH INDICATED, HOWEVER, THAT SENAT DOES NOT WISH TO SEE INDEFINITE PROLONGATION OF EXISTING ANOMALOUS SITUATION IN WHICH FRG AND BERLIN DO NOT HAVE SAME LAW ON BOOKS ON  
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IMPORTANT AND HIGHLY PUBLIC MATTER. SENAT IS AWARE THAT FRENCH ARE NEGATIVE FACTOR IN ALLIED EQUATION AND SENATOR FOR FEDERAL AFFAIRS STOBBE HAS BEEN ASKED TO DISCUSS WITH FRG POSSIBILITY OF RAISING MATTER IN BONN GROUP OR AT CAPITALS.

5. COMMENT: NATURE OF COURT'S DECISION MAY MAKE IT EASIER TO MAINTAIN FOR SHORT RUN THAT THERE IS NO NEED

TO TAMPER WITH STATUS QUO IN BERLIN SINCE FEDERAL GOVERNMENT WILL PRESUMABLY BE CONSIDERING INTRODUCTION OF NEW LEGISLATION. ON OTHER HAND, SENAT OBVIOUSLY CONTINUES TO FEEL STRONGLY THAT PRESENT SITUATION IS ANOMALY WITH DANGEROUS IMPLICATIONS FOR LEGAL UNITY, WHICH THEY CONSIDER TANGIBLE AND VITAL TIE WITH FRG. WE WOULD EXPECT THAT THEY WILL MAKE MAJOR EFFORT TO DEVELOP AGREEMENT WITH ALLIES ON SOME COURSE OF ACTION THAT COULD BE UNDERTAKEN BY HOUSE NEXT MONTH AND THAT THEY WILL CONTINUE TO PRESS FOR SOME SORT OF ALLIED DIRECTIVE TO WHICH THEY CAN PEG THAT ACTION. PRESENT SENAT THINKING IS THAT FRG CAN MORE EFFECTIVELY PRESENT ITS CASE TO ALLIES (READ FRENCH) THAN THEY AND THAT IMMEDIATE FORUM OF ACTION SHOULD THEREFORE BE BONN. SENAT MAY, HOWEVER, HAVE BELIEF THAT FRENCH ARE MORE OPEN TO PROVIDING EVENTUALLY SOME ALLIED ASSISTANCE THAN REF A INDICATED SINCE FRENCH LIAISON OFFICER CONFIRMED TO THEM THAT MATTER REMAINED OPEN. INTERESTINGLY ENOUGH, FRENCH MINISTER HAS TOLD US THAT HE UNDERSTANDS THAT THREE EMBASSIES AGREED TO RECOMMEND TO CAPITALS SHORT BK/L (PRESUMABLY THAT CONTAINED REF A), AND THAT FRENCH ARE STILL AWAITING PARIS' FORMAL POSITION. WE REMAIN DOUBTFUL THAT FORMULATION REF A WOULD SATISFY SENAT, BUT IF FRG PRESURE EVENTUALLY LEADS TO PARIS ACCEPTANCE OF DESIRABILITY OF DOING SOMETHING FOR SENAT, IT MAY PROVIDE BASIS UPON WHICH COMPROMISE CAN BE CONSTRUCTED. FOR TIME BEING, WE WOULD RECOMMEND THAT WE ALLOW TIME FOR GERMANS TO PRESENT THEIR ARGUMENTS TO FRENCH AND SEEK TO DEFLECT ANY PRESS INQUIRIES WITH COMMENT THAT SITUATION REMAINS ESSENTIALLY AS IT HAS BEEN FOR SOME MONTHS WITH RESPECT TO BERLIN, AND SENAT AND ALLIES REMAIN IN TOUCH.

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6. AFTER ABOVE DRAFTED, WE HAVE SEEN PRESS REPORTS ON COMMENTS BY KORBER AND SENAT PRESS SPOKESMAN STRUVE. FORMER APPEARED TO HELP DEFUSE SITUATION BY CALLING UPON BUNDESTAG TO PREPARE NEW LAW QUICKLY SINCE EXPEDITED PROCESS WOULD BE IN INTERESTS OF LEGAL UNITY BETWEEN BERLIN AND FRG. KORBER EXPLAINED THAT CONSTITUTIONAL COURT DECISION IS NOT BINDING ON BERLIN BUT THAT HOUSE OF REPRESENTATIVES WOULD NOT ADOPT UNAMENDED REFORM LAW LEST BERLIN HAVE MORE LIBERAL LAW THAN FRG. AT SAME TIME HE ASSURED BERLINERS THAT SENAT WOULD, THROUGH APPROPRIATE ADMINISTRATIVE MEASURES, ENSURE THAT ADMINISTRATION OF ABORTION PRACTICES WAS EFFECTIVELY SAME IN BERLIN AS FRG. STRUVE, ON OTHER HAND, EXPRESSED HIMSELF AS CONFIDENT THAT PRESENT LEGAL DISUNITY BETWEEN BERLIN AND FRG "WOULD BE REMOVED

WITHIN VERY REASONABLE TIME BY LEGAL ("RECHTSTENDENZEN")  
ACT OF ALLIES."GEORGE

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